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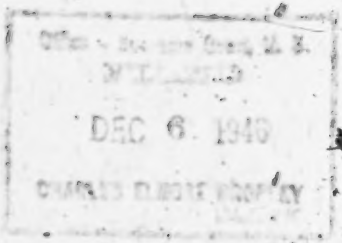

No. 759-760

In the Supreme Court of the United States

OCTOBER TERM, 1946

THE UNITED STATES OF AMERICA, PETITIONER

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, RESPONDENTS

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

The Attorney General, on behalf of the United States, prays that a writ of certiorari issue to review the judgments of the District Court of the United States for the District of Columbia entered in the above-entitled case on December 4, 1946, which case is now pending in the United States Court of Appeals for the District of Columbia on an appeal by respondents.

OPINION BELOW

The opinion of the District Court on various aspects of the case has not yet been officially re-

ported. The court's findings of fact and conclusions of law are hereinafter set forth.

JURISDICTION

The judgments of the District Court were entered on December 4, 1946. On December 4th and 5th, 1946, the respondents filed notices of appeal in the District Court and said notices were forwarded to the clerk of the Court of Appeals. The case has not been heard, submitted to, or decided by the Court of Appeals. The jurisdiction of this Court is invoked under the provisions of Section 240 (a) of the Judicial Code, as amended, 28 U. S. C. 347 (a).

QUESTION PRESENTED

Did the District Court of the United States in this case have the power under the Constitution and Statutes by the issuance of a temporary restraining order to prevent irreparable injury to the people of the United States, to prevent interference with sovereign functions of the United States, and to protect the District Court's jurisdiction to decide questions of law and fact incident thereto?

CONSTITUTIONAL PROVISIONS, STATUTES, AND EXECUTIVE ORDERS INVOLVED

The following constitutional provisions and statutes are set forth in the Appendix, printed at pp. 30–53:

(1) Constitution, Article III, Sections 1 and 2;

(2) Judicial Code, Section 24 (1) (28 U. S. C. 41 (1));

(3) the Federal Declaratory Judgment Act (Act of June 14, 1934, as amended, Section 274 (d) of the Judicial Code (28 U. S. C. 400);

(4) the War Labor Disputes Act of June 25, 1943, c. 144, 57 Stat. 163, 2 U. S. C. Supp. V, 251, 50 U. S. C. App., Supp. V, 309, 1501–1511;

(5) the pertinent portion of Section 9 of the Selective Training and Service Act of 1940, as amended (Act of September 16, 1940, c. 720, 54 Stat. 885, 50 U. S. C. App. 301 *et seq.*, as amended by Act of June 25, 1943, 57 Stat. 163, 50 U. S. C. App., Supp. V, 1501 *et seq.*);

(6) the Norris-LaGuardia Act of March 23, 1932, c. 90, 47 Stat. 70, 29 U. S. C. 101–115;

(7) The Clayton Act, Act of October 15, 1914, c. 323, Section 20, 38 Stat. 738 (29 U. S. C. 52);

(8) Executive Order No. 9728, of May 21, 1946, authorizing the Secretary of the Interior to take over the bituminous coal mines, is also set forth in the Appendix, printed at pp. 53–56.

STATEMENT

This is a contempt proceeding arising from respondents' disobedience of a temporary restraining order issued by the District Court, on petitioner's application, in an action by petitioner

for declaratory judgment and for a preliminary injunction pending such declaratory judgment.

The issues presented to the District Court and the action of the District Court with respect to such issues are set forth in the Findings of Fact and Conclusions of Law of that court, which are as follows:

FINDINGS OF FACT

1. On May 21, 1946, after investigation, the President of the United States found and proclaimed that there were interruptions or threatened interruptions in the operation of the mines producing bituminous coal as the result of existing and threatened strikes or other labor disturbances; that the coal produced by such mines was required for the war effort and was indispensable for the operation of the national economy during the transition of war to peace; that the war effort would be unduly impeded or delayed by such interruptions; and that the exercise, by the President, of the powers vested in him by the Constitution and Laws of the United States was necessary to insure the operation of such mines in the interest of the war effort and to preserve the national economic structure in the then existing emergency.

2. On May 21, 1946, the President of the United States, by virtue of the authority vested in him by the Constitution and laws of the United States, issued Executive

Order 9728, whereby he authorized and directed the Secretary of the Interior to take possession of any and all bituminous coal mines the operations of which were then interrupted or threatened with interruption because of work stoppages, and, to the extent that he might deem necessary, of any real or personal property, franchises, rights, facilities, funds and other assets used in connection with the operation of such mines; to operate or arrange for the operation of such mines in such manner as he might deem necessary in the interest of the war effort; and to do all things necessary for, or incidental to, the production, sale, and distribution of the coal produced, prepared, or handled by the said mines.

3. Pursuant to the provisions of said Executive Order 9728, the United States, through J. A. Krug, the Secretary of the Interior, on and after May 22, 1946, duly took possession of most of the bituminous coal mines of the nation. Since that time, the United States, through the Secretary of the Interior, has been and now remains in possession of such coal mines.

4. As a consequence of negotiations authorized by the said Executive Order 9728, the Secretary of the Interior, as Coal Mines Administrator, on May 29, 1946, executed an agreement at Washington, D. C. with the defendant John L. Lewis, as President of the defendant Union (which agreement is hereinafter sometimes referred to as the Krug-Lewis Agreement).

5. On May 29, 1946, the Secretary of the Interior, acting pursuant to the authority of the aforesaid Executive Order 9728 and Section 5 of the War Labor Disputes Act, and in accordance with the provisions of the Krug-Lewis agreement, filed an application with the National Wage Stabilization Board for changes in wages and other terms and conditions of employment at the bituminous coal mines in Government possession. The National Wage Stabilization Board thereupon, on May 31, 1946, issued its order, pursuant to Section 5 of the War Labor Disputes Act, approving changes in wages and other terms and conditions of employment agreed upon in the Krug-Lewis agreement and directed that they be put into effect at the said mines. Said order was approved by the President of the United States on May 31, 1946.

6. The Krug-Lewis agreement, by its terms, "covers for the period of Government possession the terms and conditions of employment in respect to all mines in Government possession which were as of March 31, 1946, subject to the National Bituminous Coal Wage Agreement, dated April 11, 1945."

7. The defendant Lewis, on October 21, 1946, sent a letter to the Secretary of the Interior in which he stated that Section 15 of the National Bituminous Coal Wage Agreement, dated April 11, 1945, had been specifically carried forward into the Krug-Lewis agreement and that under that sec-

tion, either party to the Krug-Lewis agreement might give ten days' notice in writing of a desire for a negotiating conference upon the matters outlined in said notice; that the other party to the Krug-Lewis agreement was thereupon required to attend said negotiating conference; and that at the end of fifteen days after the beginning of said negotiating conference, either party might give to the other, a notice in writing of the termination of the Krug-Lewis agreement, to be effective five days after the receipt of such notice. Acting pursuant to this interpretation of the Krug-Lewis agreement, the defendant Lewis notified the Secretary of the Interior that the defendant Union requested "a joint conference of the accredited representatives of the joint contracting parties to the Krug-Lewis agreement of May 29, 1946, for the purpose of negotiating new arrangements affecting wages, hours, rules, practices, differentials, inequalities and all other pertinent matters affecting or appertaining to the National Bituminous coal industry".

8. In reply thereto, on October 22, 1946, N. H. Collisson, Captain, USNR, as Coal Mines Administrator, acting for the Secretary of the Interior, sent a letter to the defendant Lewis in which the Coal Mines Administrator stated that the Krug-Lewis agreement had superseded Section 15 of the National Bituminous Coal Wage Agreement dated April 11, 1945; that the provi-

sions of said Section 15 were no longer in effect; that, therefore, the Secretary of the Interior and the Coal Mines Administrator were unable to treat the defendant Lewis' letter of October 21, 1946, as a notice given pursuant to any existing contract provisions; and that the Coal Mines Administration considered the Krug-Lewis agreement in full force and effect; but that the Administration was ready to meet with the defendant Lewis "to discuss matters affecting the operation of the bituminous coal mines under the Krug-Lewis agreement, and for that purpose, with the above reservations, any date for such discussions is agreeable to this Administration."

9. On the same day, the defendant Lewis sent a further letter to the Secretary of the Interior in which he reiterated his position and asserted that failure of the Secretary of the Interior to accede to his request would void the Krug-Lewis agreement.

10. On October 27, 1946, the Secretary of the Interior sent a telegram to the defendant Lewis requesting the defendant Lewis and (or) his representatives to meet with the Coal Mines Administrator and his associates on November 1 or any other date agreeable to the defendant Lewis.

12. In reply to the said telegram of October 27, 1946, the defendant Lewis, by a telegram of October 28, 1946, to the Secre-

tary of the Interior, advised the Secretary of the Interior as follows:

"I ESTEEM YOUR TELEGRAM 27TH, RECEIVED BY ME TODAY, AS COMPLIANCE WITH REQUEST FOR OFFICIAL CONFERENCE CONTAINED BY LETTER 21 OCTOBER. I ACCORDINGLY ADVISE THAT REPRESENTATIVES UNITED MINE WORKERS WILL MEET WITH COAL MINES ADMINISTRATOR COLLISSON AND HIS ASSOCIATES AT 11 O'CLOCK A. M. ON FRIDAY, 1 NOVEMBER. UNDER THESE CONDITIONS KRUG-LEWIS AGREEMENT REMAINS EFFECTIVE AND UNCHANGED DURING PERIOD OF NEGOTIATION."

13. On November 1, 1946, a conference was held in Washington, D. C., attended by representatives of the Secretary of the Interior and of the defendant Union, and that conference was thereafter continued from time to time, from November 1 to and including November 14, 1946, all without prejudice to the contentions of the respective parties regarding the right claimed by the defendants to terminate the Krug-Lewis agreement by unilateral notice. During the course of the meeting, on November 11, 1946, attended by the defendant Lewis and the Secretary of the Interior, among others, the representatives of the defendant Union for the first time advanced specific proposals for changes in the wages and other terms and conditions of employment in effect at the bituminous coal mines in the Government's possession, which proposals included changes of a substantial and far-reaching nature and which would involve an increase in the cost of

production of coal at the mines of at least fifty cents a ton.

14. Thereafter, on November 15, 1946, the defendant Lewis sent a letter to the Secretary of the Interior stating that, "Fifteen days having now elapsed since the beginning of the above conference, the United Mine Workers of America, exercising its option, hereby terminates said Krug-Lewis agreement as of 12:00 o'clock p. m. midnight Wednesday, November 20, 1946."

15. On the same day the Secretary of the Interior advised the defendant Lewis, by letter, "that you have no power under the Krug-Lewis agreement of May 29 or under the law, by unilateral declaration, to terminate the contract which by its terms 'covers for the period of Government possession the terms and conditions of employment.'"

16. It has been for some years, and is now, as the defendants at all times well knew, the well established policy of the defendant Union, consistently adhered to by its members, that the miners will not work in the absence of a contract, and that upon the declaration by the defendants that no contract exists, the miners cease work. No other stoppage order ever goes out. Such a declaration of "no contract" is in fact a call to strike.

17. The defendants sent out and distributed to the membership of the defendant

Union a notice dated November 15, 1946, which read as follows:

UNITED MINE WORKERS OF AMERICA

JOHN L. LEWIS, President — Metropolitan 0530

[SEAL]

UNITED MINE WORKERS' BUILDING
WASHINGTON 5, D. C.

NOVEMBER 15, 1946

To the Members of the United Mine Workers of America:

Greetings:

The following is the exact text of a letter sent to the Secretary of the Interior, in charge of Coal Mines Administration:

"NOVEMBER 15, 1946

Honorable J. A. KRUG
Secretary of the Interior
Washington, D. C.

DEAR MR. SECRETARY: In accordance with the provisions of the Krug-Lewis Agreement dated May 29, 1946, the United Mine Workers of America on October 21, 1946, officially requested a joint conference of the accredited representatives of the joint contracting parties to said agreement. Such conference convened on November 1, 1946.

Fifteen days having now elapsed since the beginning of said conference, the United Mine Workers of America, exercising its option, hereby terminates said Krug-Lewis Agreement as of 12:00 o'clock

P. M., midnight, Wednesday, November 20, 1946.

Yours truly,

UNITED MINE WORKERS OF AMERICA,
By JOHN L. LEWIS, *President.*"

The foregoing is for your official information.

Sincerely yours,

/s/ JOHN L. LEWIS,
President.

This notice was a cease work or strike notice.

18. The letter of November 15, 1946, from the defendants to the Secretary of the Interior, purporting to terminate the Krug-Lewis agreement as of November 20, 1946, was released by the defendants to, and published by, the public press on or about November 15 and 16, 1946.

19. Thereafter, on November 18, 1946, the United States of America by the Attorney General of the United States, brought a suit against the United Mine Workers of America, an unincorporated association, and John L. Lewis, individually and as president of the United Mine Workers of America, under the Federal Declaratory Judgment Act (28 U. S. C. Sec. 400) to obtain a declaration of rights and other legal relations, including a declaratory judgment or decree, an order for temporary injunctive relief, and such further relief as might be necessary or proper.

20. Upon the filing of the verified complaint, and upon plaintiff's application, this Court, on November 18, 1946, issued a temporary restraining order against the defendants, based upon the facts alleged in the complaint and upon affidavits filed in support of the application for the restraining order. The restraining order directed:

"* * * that the defendants and each of them and their agents, servants, employees and attorneys, and all persons in active concert or participation with them, be and they are hereby restrained pending further order of this Court from permitting to continue in effect the notice heretofore given by the defendant John L. Lewis to the Secretary of Interior dated November 15, 1946; and from issuing or otherwise giving publicity to any notice that or to the effect that the Krug-Lewis Agreement has been, is, or will at some future date be terminated, or that said agreement is or shall at some future date be nugatory or void at any time during Government possession of the bituminous coal mines; and from breaching any of their obligations under said Krug-Lewis Agreement; and from coercing, instigating, inducing or encouraging the mine workers at the bituminous coal mines in the Government's possession, or any of them, or any person, to interfere by strike, slow down, walkout, cessation of work, or otherwise, with the operation of said mines by continuing in effect the aforesaid notice or by issuing any

notice of termination of agreement or through any other means or device; and from interfering with or obstructing the exercise by the Secretary of the Interior of his functions under Executive Order 9728; and from taking any action which would interfere with this Court's jurisdiction or which would impair, obstruct, or render fruitless, the determination of this case by the Court."

The restraining order by its terms provided that it would expire at 3:00 o'clock p. m. on November 27, 1946, unless extended. Plaintiff's motion for a preliminary injunction was set down for hearing on November 27, 1946, at 10:00 o'clock a. m.

21. The defendants, and each of them, were duly and properly served at 2:15 p. m. on November 18, 1946, with a certified copy of the temporary restraining order, together with copies of the verified complaint, including and embracing plaintiff's prayer and motion for a temporary restraining order, and the supporting affidavits.

22. Following the service upon them of the Court's temporary restraining order, the defendants, as hereinafter more fully appears, have taken no action designed to withdraw the notice of alleged termination dated November 15, 1946, but on the contrary, have wilfully, wrongfully and deliberately permitted said notice to continue in effect. The defendants, and each of them, knew that, in accordance with their own established policy, if the notice of alleged

termination were not withdrawn and were permitted to continue in effect, a work stoppage at the mines would occur at midnight November 20, 1946. As a result of the foregoing, on or about November 18, 1946, there commenced at said coal mines a gradual walkout, strike, cessation of and refusal to work by the members of defendant Union, which increased daily until 12 o'clock midnight of November 20, 1946. Since that hour and at all times thereafter there has been a walkout, strike, cessation of and refusal to work by substantially all of the members of the defendant Union employed at coal mines in the possession of the Government.

23. On November 21, 1946, the United States, by its Attorney General, filed a petition, supported by affidavits, for a rule to show cause why the defendants should not be punished as and for a contempt of this Court, alleging that the defendants, in defiance of the terms of said temporary restraining order, had wilfully, wrongfully and deliberately disobeyed said order.

24. On said petition and affidavit, the Court on the same day issued a rule to show cause ordering said defendants to appear before this court on November 25, 1946, to show cause why they should not be punished as and for contempt of this court. It was further ordered that if upon the return of said defendants it should be found that the alleged contempt was not sufficiently

purged, a trial should be held on November 27, 1946, and the defendants should, unless waived by them, be tried upon the charges of contempt by this court with an advisory jury to be empaneled by the court.

23. On the return day, the defendants, being represented by counsel, and with the defendant John L. Lewis personally present in court, made an oral return to the rule to show cause as follows:

"The defendants and each of them respectfully state to the Court that they and each of them, since the giving of said notice of November 15, 1946, since the issuance of Your Honor's temporary restraining order of November 18, have done no act nor spoken any word pertaining to said notice or in reference to permitting it to continue in effect.

"The status of the notice and the position of each of the defendants in reference thereto remains today in the status which existed at the time of its giving and at all times subsequent thereto.

"The defendants and each of them, Your Honor, therefore respectfully say to this Court, that the situation with respect to such notice of November 15, 1946, for the reasons herein stated remains unchanged.

"The defendants and each of them respectfully deny the jurisdiction of this Honorable Court to have issued the temporary restraining order and the rule to show cause issued thereunder.

"The defendants will be prepared to present arguments on this question on November 27, the time fixed by the Court in its order, as we understand it, for the hearing of this case."

26. Thereupon, the Court, finding that a contempt had been alleged and that the alleged contempt had not been sufficiently purged by the defendants' return, ordered that the matter be set down for trial on November 27, 1946.

27. On November 26, 1946, defendants filed and served upon plaintiff a motion to discharge and vacate the rule to show cause in which they asserted that the Court was without jurisdiction over the subject matter of the cause; that equity will not enjoin the commission of a crime; that this was a proceeding for a criminal contempt, the defendants suggesting that it was based wholly on hearsay, information and belief and should have been presented as an independent proceeding; and finally that the restraining order was void because it contravened the First, Fifth and Thirteenth Amendments to the Constitution of the United States.

28. On November 27, 1946 and again on November 29, 1946, with the defendant Lewis personally in court on both days and both the defendant Union and the defendant Lewis represented by counsel, arguments were presented in support of and in opposition to the motion to discharge and vacate the rule to show cause.

29. On November 27, 1946, before the expiration date of the temporary restraining order issued on November 18, 1946, the court, on plaintiff's application and for good cause shown, over objection of defendants extended said temporary restraining order for a like period of ten days.

30. On November 29, 1946 this court denied defendants' motion to discharge and vacate the rule to show cause and set forth its reasons therefor in an opinion which appears in the record. Thereupon, the defendants entered pleas of not guilty, waived their rights, if any, to an advisory jury, and the case proceeded to trial before the court.

31. The defendants were, before the trial, apprised of the fact that they were charged with both a civil and a criminal contempt; were subsequently advised, in advance, of the names and identities of witnesses to be called by the plaintiff; and were, by their own admission in open court, liberally informed as to all relevant information and were given every opportunity to meet the contentions of the plaintiff.

32. A full and complete hearing extending over a period of four days, was had at which the parties were given full opportunity to present evidence, to cross-examine witnesses, to present argument and to avail themselves of any and all rights to which they might be entitled.

33. Throughout all hearings on this matter, commencing with the hearing on No-

vember 25, 1946, defendant John L. Lewis was personally present before this court.

34. The defendants, and each of them

(a) have at all times since 2:15 p. m. on November 18, 1946 permitted to continue in effect the notice of alleged termination given by the defendant John L. Lewis to the Secretary of Interior on November 15, 1946;

(b) have instigated, induced and encouraged the workers at said mines to interfere, by strike, slow-down, walkout and cessation of work, with the operation of said mines by continuing in effect the notice of November 15, 1946, purporting to terminate the Krug-Lewis Agreement;

(c) have completed the calling of a strike and have completed the instigation, inducement, and encouragement of the mine workers at the bituminous coal mines in the Government's possession to interfere, by strike, slow-down, walkout and cessation of work, with the operation of said mines, by permitting to remain outstanding the aforesaid notice of November 15, 1946, purporting to terminate the so-called Krug-Lewis Agreement;

(d) have instigated, induced and encouraged the workers at said mines to interfere by strike, slow-down, walkout, and cessation of work, with the operation of said mines, thereby interfering with and obstructing the exercise by the Secretary of the Interior of his functions under Executive Order No. 9728 and under the War Labor Disputes Act, and with the perform-

ance of other governmental functions, by failing to withdraw the notice of November 15, 1946, purporting to terminate the Krug-Lewis Agreement, and by failing to announce to and notify the members of defendant union employed at said mines that said notice of November 15, 1946 was withdrawn, and by failing to notify said members of defendant Union that there is in force and in effect an agreement or contract between the defendant Union and the United States of America, that is, the so-called Krug-Lewis Agreement; and

(e) have interfered with this court's jurisdiction and have impaired and obstructed the determination of this case by the court.

35. As of November 20, 1946 there were approximately 76,000,000 tons of bituminous coal on hand and if the current work stoppage continues production would then be at the rate of about 658,000 tons a week or about 5.3 percent of the normal production of about 12,500,000 tons a week. Normal requirements of bituminous coal during a three months' period beginning December 2, 1946 would be at the rate of approximately 54,000,000 tons a month and if all available coal could be treated as a pool, although such ideal distribution cannot as a practical matter be obtained, to be used for an assumed normal consumption the supply on hand on November 20, 1946 would last about 37 days.

36. The characteristics of the economy of the United States make it peculiarly vulnerable to a stoppage in coal production, largely because of its great dependence on machines, about 43 percent of all energy produced in the United States being derived from bituminous coal. Four-fifths of all energy used in driving locomotives on Class 1 railroads is derived from bituminous coal; about four-fifths of all fuels and energy-producing material used in the production of steel is derived from bituminous coal; over 50 percent of all energy used in the production of electric power by public utilities is derived from bituminous coal; and about four-fifths of all energy obtained for electric power is derived from bituminous coal. Over 80 percent of Class 1 railroads, over 60 percent of public utilities and steel producing industries, would have to shut down completely within sixty days if the current coal stoppage continues for that length of time.

37. If the current work stoppage were to continue for a sixty-day period there would be a decline in total employment of at least 5,000,000 full time workers and the national income would decline from the present rate of $170,000,000,000 per year to a rate of $150,000,000,000 per year with a resulting loss in income paid to workers at the rate of considerably more than $1,000,000,000 per month, and with a loss of national income, a fraction of which has been estimated at one billion to one and one-quarter

billion dollars during that period. A loss of even one billion dollars in income payments, only a fraction of the loss which would actually be suffered from a continued work stoppage, would result in a loss to the United States of tax revenues of about $280,000,000.

38. The current work stoppage has caused and will continue to cause irreparable injury to the plaintiff, to the people of the United States and to the industry and economy of the United States.

39. The coal produced by the mines now affected by the work stoppage is indispensable for the continued operation of the national economy during the transition from war to peace.

CONCLUSIONS OF LAW

1. The United States in seizing the mines pursuant to Executive Order 9728 and in operating them following such seizure was at all times exercising its sovereign functions derived from the Constitution and laws of the United States.

2. The defendants, and each of them, have obstructed and interfered with the exercise by the United States of its sovereign functions.

3. The defendants, and each of them, have unlawfully coerced, instigated, induced, and encouraged the mine workers at the bituminous coal mines in the Government's possession to interfere by strike, slow-down,

walkout, cessation of work, or otherwise, with the operation of coal mines.

4. By reason of the facts found in paragraphs numbered 34 (a) through 34 (e), above, the defendants, and each of them, have at all times since the service upon them on November 18, 1946, of the temporary restraining order of this Court, wilfully, wrongfully and deliberately disobeyed and violated the terms of the said temporary restraining order, and have obstructed and interfered with the determination of this case by the court.

5. The defendant United Mine Workers of America at all times since the service upon it on November 18, 1946, of the temporary restraining order, has, beyond a reasonable doubt, committed and continues to commit a civil contempt of this Court.

6. The defendant United Mine Workers of America at all times since the service upon it on November 18, 1946, of the temporary restraining order, has, beyond a reasonable doubt, been guilty, and is now guilty of a criminal contempt of this Court.

7. The defendant John L. Lewis at all times since the service upon him on November 18, 1946, of the temporary restraining order, has, beyond a reasonable doubt, committed and continues to commit a civil contempt of this Court.

8. The defendant John L. Lewis at all times since the service upon him on November 18, 1946, of the temporary restraining

order, has beyond a reasonable doubt, been guilty and is now guilty of a criminal contempt of this Court.

The judgment of the District Court was that respondent United Mine Workers of America, an unincorporated association, had, beyond a reasonable doubt committed civil contempt and had committed and was guilty of criminal contempt, and that it pay a fine in the sum of $3,500,000.

The judgment of the District Court with respect to respondent John L. Lewis was that he had beyond a reasonable doubt committed civil contempt and had committed and was guilty of criminal contempt, and that he pay a fine in the sum of $10,000.

REASONS FOR GRANTING THE WRIT

1. This Court has provided by Rule 39 that the fact "That the public interest will be promoted by prompt settlement in this court of the questions involved may constitute a sufficient reason" for the granting of certiorari to the United States Court of Appeals for the District of Columbia before judgment. In view of the irreparable injury threatened the United States by respondents' position that the District Court lacked jurisdiction to issue the Temporary Restraining Order in these proceedings, it is believed that the public interest clearly requires a prompt settlement of the issue by this Court. Only a determination of the

issue by this Court can authoritatively settle this question.

2. The power of a court to preserve its jurisdiction pending determination of the case is an essential prerequisite of the judicial process. A court has initial jurisdiction to determine its own jurisdiction, except in cases of out-right usurpation (*Stoll* v. *Gottlieb*, 305 U. S. 165, 171–2), and necessarily therefore is empowered to take preliminary action to preserve the subject matter before it, and to protect its jurisdiction to determine the merits of the controversy. Cf. *Jones* v. *Securities & Exchange Commission*, 298 U. S. 1, 17–18. Whether or not it is ultimately determined that the Norris-LaGuardia or the Clayton Acts may be applicable here, the District Court was authorized to resolve the issue. The issue of its jurisdiction in this case was certainly not frivolous.

This Court has expressly sanctioned punishment for contempt of such preliminary orders, regardless of the jurisdiction of the issuing court over the ultimate controversy. In *United States* v. *Shipp*, 203 U. S. 563, this Court unanimously sustained its jurisdiction to try for contempt a person violating an order which had stayed all proceedings against an accused pending appeal of a habeas corpus action to this Court, although there was doubt whether the court had jurisdiction of the habeas corpus appeal. Mr. Justice

Holmes stated that this Court and "it alone necessarily had jurisdiction to decide whether the case was properly before it. On that question, at least, it was its duty to permit argument and to take the time required for such consideration as it might need. * * * Until its judgment declining jurisdiction should be announced, it had authority, from the necessity of the case, to make orders to preserve the existing conditions and the subject of the petition * * *", 203 U. S. at 573. On similar grounds, in *Carter* v. *United States*, 135 F. 2d 858 (C. C. A. 5), the Circuit Court of Appeals sustained a contempt judgment entered by a district court for violation of a temporary restraining order issued in an injunction action against certain labor unions, although the Circuit Court of Appeals itself held, in a contemporaneous appeal in the main case, that the district court had no jurisdiction, under the Norris-LaGuardia Act, over the basic action for an injunction.

3. The issue of the effect of the Norris-LaGuardia and Clayton Acts upon the District Court's jurisdiction to grant the relief prayed for by the Government is not involved. In any event, however, the lower court correctly concluded that neither act denies the United States the right to invoke, or the federal courts the right to exercise, equitable powers necessary to prevent irreparable injury to the people of the

United States, to prevent interference with sovereign functions of the United States, and to protect the district court's jurisdiction pending a judicial determination of disputed issues. The Norris-LaGuardia Act does not refer, in specific terms or by necessary implication, to the United States, and traditionally the Government would not be bound by it. Moreover, the legislative history of the statute shows that it was not intended to curtail or limit the Government's sovereign powers or to curtail the jurisdiction of the Federal courts when invoked by the Government in support and protection of its sovereign functions. 75 Cong. Rec. 5464, 5503.[1]

4. Section 240 (a) of the Judicial Code, as amended, specifically authorizes the issuance of a writ of certiorari "upon the petition of any party," and the Court has said "that the sole essential of this Court's jurisdiction to review is that there be a case pending in the Circuit Court of Appeals." *Gay* v. *Ruff*, 292 U. S. 25, 30. The

[1] Representative Michener, a member of the committee which reported the bill which became the Norris-LaGuardia Act, stated, in his description of the measure (75 Cong. Rec. 5464): "* * * I do not believe that the enactment of the bill into law will take away from the Federal Government any rights which it has under existing law, to seek and obtain injunctive relief where the same is necessary for the functioning of the Government." Similarly, Representative LaGuardia, the sponsor of the legislation in the House, stated that he did not see any possible way in which "* * * the United States can be brought in under the provisions of this bill." 75 Cong. Rec. 5503.

Court has heretofore exercised its power to grant the writ, before hearing in the intermediate appellate court, on application of the prevailing party, in circumstances analogous to those presented here. *United States* v. *Bankers' Trust Co.* (reported *sub nom Norman* v. *Baltimore & Ohio R. Co.*), 294 U. S. 240, 243, 294, 295. The Government's petition in that case, October Term, 1934, Nos. 471–2, contains a full discussion of Section 240 (a), and the Court's power in the premises.

5. Rule 39 provides for proceedings to bring up to this Court on writ of certiorari a case pending in the circuit courts of appeals or the United States Court of Appeals for the District of Columbia before judgment is given in such court. In numerous cases that power has been exercised by this Court. *The Three Friends,* 166 U. S. 1; *Forsyth* v. *Hammond,* 166 U. S. 506; *St. Louis, Kansas City & Col. Rd. Co.* v. *Wabash Rd. Co.,* 217 U. S. 247, 250–251; *White* v. *Mechanics Securities Corp.,* 269 U. S. 283; *Royal Insurance Co.* v. *Fleet Corporation,* 280 U S. 320; *Fetters* v. *United States ex rel. Cunningham,* 283 U. S. 638, 641; *Eastern Equities Corp.* v. *United States,* 282 U. S. 409, 415; *Piedmont & Northern Ry. Co.* v. *Interstate Commerce Commission,* 286 U. S. 299; *United States* v. *Bankers' Trust Co.,* 294 U. S. 240; *Railroad Retirement Board* v. *Alton Railroad Co.,* 295 U. S. 330; *Rickert Rice Mills, Inc.*

v. *Pontenot,* 297 U. S. 110; *Carter* v. *Carter Coal Co.,* 298 U. S 238; *Hood & Sons, Inc.* v. *United States,* 307 U. S. 588; *Ex Parte Quirin,* 317 U. S. 1; *Porter* v. *Dicken,* Oct. Term, 1945, No. 1118, decided May 27, 1946. In all these instances, the exigency of immediate determination by this Court was far less than here, and the situation presented to this Court hardly as significant.

CONCLUSION

In view of the public interest involved, it is respectfully submitted that this petition for a writ of certiorari should be granted and that the rules of this Court be suspended in this case and that this Court require a prompt response to this petition and advance the case for argument.

TOM C. CLARK,
Attorney General.

DECEMBER 1946.

APPENDIX

1. Article III of the Constitution provides, in part, as follows:

> The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.
>
> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

2. Judicial Code, Section 24 (1), as amended, 28 U. S. C. 41 (1), provides in part as follows:

The district courts shall have original jurisdiction as follows:

First. Of all suits of a civil nature, at common law or in equity, brought by the United States, or by any officer thereof authorized by law to sue * * *.

3. The Federal Declaratory Judgment Act, Act of June 14, 1934, c. 512, 48 Stat. 955, as amended by the Act of August 30, 1935, c. 829, Sec. 405, 49 Stat. 1027, 28 U. S. C. 400, Judicial Code, Section 274d, provides as follows:

(1) In cases of actual controversy (except with respect to Federal taxes) the courts of the United States shall have power upon petition, declaration, complaint, or other appropriate pleadings to declare rights and other legal relations of any interested party petitioning for such declaration, whether or not further relief is or could be prayed, and such declaration shall have the force and effect of a final judgment or decree and be reviewable as such.

(2) Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient, the court shall, on reasonable notice, require any adverse party, whose rights have been adjudicated by the declaration, to show cause why further relief should not be granted forthwith.

(3) When a declaration of right or the granting of further relief based thereon shall involve the determination of issues of fact triable by a jury, such issues may be submitted to a jury in the form of interrogatories, with proper instructions by the

court, whether a general verdict be required or not.

4. The War Labor Disputes Act (Act of June 25, 1943, c. 144, 57 Stat. 163, 50 U. S. C. App. (Supp. V), 1501–1511) provides as follows:

AN ACT, Relating to the use and operation by the United States of certain plants, mines, and facilities in the prosecution of the war, and preventing strikes, lockouts, and stoppages of production, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "War Labor Disputes Act."

DEFINITIONS

SEC. 2. As used in this Act—

(a) The term "person" means an individual, partnership, association, corporation, business trust, or any organized group of persons.

(b) The term "war contract" means—

(1) a confract with the United States entered into on behalf of the United States by an officer or employee of the Department of War, the Department of the Navy, or the United States Maritime Commission;

(2) a contract with the United States entered into by the United States pursuant to an Act entitled "An Act to promote the defense of the United States";

(3) a contract, whether or not with the United States, for the production, manufacture, construction, reconstruction, installation, maintenance, storage, repair, mining, or transportation of—

(A) any weapon, munition, aircraft, vessel, or boat;

(B) any building, structure or facility;

(C) any machinery, tool, material, supply, article, or commodity; or

(D) any component material or part of or equipment for any article described in subparagraph (A), (B), or (C);

the production, manufacture, construction, reconstruction, installation, maintenance, storage, repair, mining, or transportation of which by the contractor in question is found by the President as being contracted for in the prosecution of the war.

(c) The term "war contractor" means the person producing, manufacturing, constructing, reconstructing, installing, maintaining, storing, repairing, mining, or transporting under a war contract or a person whose plant, mine, or facility is equipped for the manufacture, production, or mining of any articles or materials which may be required in the prosecution of the war or which may be useful in connection therewith; but such term shall not include a carrier, as defined in title I of the Railway Labor Act, or a carrier by air subject to title II of such Act.

(d) The terms "employer", "employee", "representative", "labor organization", and "labor dispute" shall have the same meaning as in section 2 of the National Labor Relations Act.

POWER OF PRESIDENT TO TAKE POSSESSION OF PLANTS

SEC. 3. Section 9 of the Selective Training and Service Act of 1940 is hereby

amended by adding at the end thereof the following new paragraph:

"The power of the President under the foregoing provisions of this section to take immediate possession of any plant upon a failure to comply with any such provisions, and the authority granted by this section for the use and operation by the United States or in its interests of any plant of which possession is so taken, shall also apply as hereinafter provided to any plant, mine, or facility equipped for the manufacture, production, or mining of any articles or materials which may be required for the war effort or which may be useful in connection therewith. Such power and authority may be exercised by the President through such department or agency of the Government as he may designate, and may be exercised with respect to any such plant, mine, or facility whenever the President finds, after investigation and proclaims that there is an interruption of the operation of such plant, mine, or facility as a result of a strike or other labor disturbance, that the war effort will be unduly impeded or delayed by such interruption, and that the exercise of such power and authority is necessary to insure the operation of such plant, mine, or facility in the interest of the war effort: *Provided,* That whenever any such plant, mine, or facility has been or is hereafter so taken by reason of a strike, lock-out, threatened strike, threatened lock-out, work stoppage, or other cause, such plant, mine, or facility shall be returned to the owners thereof as soon as practicable, but in no event more than sixty days after the restoration of the productive efficiency thereof prevailing prior to

the taking of possession thereof: *Provided further,* That possession of any plant, mine, or facility shall not be taken under authority of this section after the termination of hostilities in the present war, as proclaimed by the President, or after the termination of the War Labor Disputes Act; and the authority to operate any such plant, mine, or facility under the provisions of this section shall terminate at the end of six months after the termination of such hostilities as so proclaimed."

TERMS OF EMPLOYMENT AT GOVERNMENT-OPERATED PLANTS

SEC. 4. Except as provided in section 5 hereof, in any case in which possession of any plant, mine, or facility has been or shall be hereafter taken under the authority granted by section 9 of the Selective Training and Service Act of 1940, as amended, such plant, mine, or facility, while so possessed, shall be operated under the terms and conditions of employment which were in effect at the time possession of such plant, mine, or facility was so taken.

APPLICATION TO WAR LABOR BOARD FOR CHANGE IN TERMS OF EMPLOYMENT AT GOVERNMENT-OPERATED PLANTS

SEC. 5. When possession of any plant, mine, or facility has been or shall be hereafter taken under authority of section 9 of the Selective Training and Service Act of 1940, as amended, the Government agency operating such plant, mine, or facility, or a majority of the employees of such plant, mine, or facility or their representatives,

may apply to the National War Labor Board for a change in wages or other terms or conditions of employment in such plant, mine, or facility. Upon receipt of any such application, and after such hearings and investigations as it deems necessary, such Board may order any changes in such wages, or other terms and conditions, which it deems to be fair and reasonable and not in conflict with any Act of Congress or any Executive order issued thereunder. Any such order of the Board shall, upon approval by the President, be complied with by the Government agency operating such plant, mine, or facility.

INTERFERENCE WITH GOVERNMENT OPERATION OF PLANTS

SEC. 6. (a) Whenever any plant, mine, or facility is in the possession of the United States, it shall be unlawful for any person (1) to coerce, instigate, induce, conspire with, or encourage any person, to interfere, by lock-out, strike, slow-down, or other interruption, with the operation of such plant, mine, or facility, or (2) to aid any such lock-out, strike, slow-down, or other interruption interfering with the operation of such plant, mine, or facility by giving direction or guidance in the conduct of such interruption, or by providing funds for the conduct or direction thereof or for the payment of strike, unemployment, or other benefits to those participating therein. No individual shall be deemed to have violated the provisions of this section by reason only of his having ceased work or having refused to continue to work or to accept employment.

(b) Any person who willfully violates any provision of this section shall be subject to a fine of not more than $5,000, or to imprisonment for not more than one year, or both.

FUNCTIONS AND DUTIES OF THE NATIONAL WAR LABOR BOARD

SEC. 7. (a) The National War Labor Board (hereinafter in this section called the "Board"), established by Executive Order Number 9017, dated January 12, 1942, in addition to all powers conferred on it by section 1 (a) of the Emergency Price Control Act of 1942, and by any Executive order or regulation issued under the provisions of the Act of October 2, 1942, entitled "An Act to amend the Emergency Price Control Act of 1942, to aid in preventing inflation, and for other purposes," and by any other statute, shall have the following powers and duties:

(1) Whenever the United States Conciliation Service (hereinafter called the "Conciliation Service") certifies that a labor dispute exists which may lead to substantial interference with the war effort, and cannot be settled by collective bargaining or conciliation, to summon both parties to such dispute before it and conduct a public hearing on the merits of the dispute. If in the opinion of the Board a labor dispute has become so serious that it may lead to substantial interference with the war effort, the Board may take such action on its own motion. At such hearing both parties shall be given full notice and opportunity to be heard,

but the failure of either party to appear shall not deprive the Board of jurisdiction to proceed to a hearing and order.

(2) To decide the dispute, and provide by order the wages and hours and all other terms and conditions (customarily included in collective-bargaining agreements) governing the relations between the parties, which shall be in effect until further order of the Board. In making any such decision the Board shall conform to the provisions of the Fair Labor Standards Act of 1938, as amended; the National Labor Relations Act; the Emergency Price Control Act of 1942, as amended; and the Act of October 2, 1942, as amended, and all other applicable provisions of law; and where no other law is applicable the order of the Board shall provide for terms and conditions to govern relations between the parties which shall be fair and equitable to employer and employee under all the circumstances of the case.

(3) To require the attendance of witnesses and the production of such papers, documents, and records as may be material to its investigation of facts in any labor dispute, and to issue subpenas requiring such attendance or production.

(4) To apply to any Federal district court for an order requiring any person within its jurisdiction to obey a subpena issued by the Board; and jurisdiction is hereby conferred on any such court to issue such an order.

(b) The Board, by its Chairman, shall have power to issue subpenas requiring the attendance and testimony of witnesses, and the production of any books, papers, records, or other documents, material to any inquiry or hearing before the Board or any designated member or agent thereof. Such subpenas shall be enforceable in the same manner, and subject to the same penalties, as subpenas issued by the President under title III of the Second War Powers Act, approved March 27, 1942.

(c) No member of the Board shall be permitted to participate in any decision in which such member has a direct interest as an officer, employee, or representative of either party to the dispute.

(d) Subsections (a) (1) and (2) shall not apply with respect to any plant, mine, or facility of which possession has been taken by the United States.

(e) The Board shall not have any powers under this section with respect to any matter within the purview of the Railway Labor Act, as amended.

NOTICE OF THREATENED INTERRUPTIONS IN WAR PRODUCTION, ETC.

SEC. 8. (a) In order that the President may be apprised of labor disputes which threaten seriously to interrupt war production, and in order that employees may have an opportunity to express themselves, free from restraint or coercion, as to whether they will permit such interruptions in wartime—

(1) The representative of the employees of a war contractor, shall give

to the Secretary of Labor, the National War Labor Board, and the National Labor Relations Board, notice of any such labor dispute involving such contractor and employees, together with a statement of the issues giving rise thereto.

(2) For not less than thirty days after any notice under paragraph (1) is given, the contractor and his employees shall continue production under all the conditions which prevailed when such dispute arose, except as they may be modified by mutual agreement or by decision of the National War Labor Board.

(3) On the thirtieth day after notice under paragraph (1) is given by the representative of the employees, unless such dispute has been settled, the National Labor Relations Board shall forthwith take a secret ballot of the employees in the plant, plants, mine, mines, facility, facilities, bargaining unit or bargaining units, as the case may be, with respect to which the dispute is applicable on the question whether they will permit any such interruption of war production. The National Labor Relations Board shall include on the ballot a concise statement of the major issues involved in the dispute and of the efforts being made and the facilities being utilized for the settlement of such dispute. The National Labor Relations Board shall by order forthwith certify the results of such balloting, and such results shall be open to public inspection. The National Labor Relations Board may provide for

preparing such ballot and distributing it to the employees at any time after such notice has been given.

(b) Subsection (a) shall not apply with respect to any plant, mine, or facility of which possession has been taken by the United States.

(c) Any person who is under a duty to perform any act required under subsection (a) and who willfully fails or refuses to perform such act shall be liable for damages resulting from such failure or refusal to any person injured thereby and to the United States if so injured. The district courts of the United States shall have jurisdiction to hear and determine any proceedings instituted pursuant to this subsection in the same manner and to the same extent as in the case of proceedings instituted under section 24 (14) of the Judicial Code.

POLITICAL CONTRIBUTIONS BY LABOR ORGANIZATIONS

SEC. 9. Section 313 of the Federal Corrupt Practices Act, 1925 (U. S. C., 1940 edition, title 2, sec. 251), is amended to read as follows:

"SEC. 313. It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution in connection with any election to any political office, or for any corporation whatever, or any labor organization to make a contribution in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or for any candidate,

political committee, or other person to accept or receive any contribution prohibited by this section. Every corporation or labor organization which makes any contribution in violation of this section shall be fined not more than $5,000; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution by the corporation or labor organization, as the case may be, in violation of this section shall be fined not more than $1,000 or imprisoned for not more than one year, or both. For the purposes of this section 'labor organization' shall have the same meaning as under the National Labor Relations Act."

TERMINATION OF ACT

SEC. 10. Except as to offenses committed prior to such date, the provisions of this Act and the amendments made by this Act shall cease to be effective at the end of six months following the termination of hostilities in the present war, as proclaimed by the President, or upon the date (prior to the date of such proclamation) of the passage of a concurrent resolution of the two Houses of Congress stating that such provisions and amendments shall cease to be effective.

SEPARABILITY

SEC. 11. If any provision of this Act or of any amendment made by this Act, or the application of such provision to any person or circumstance, is held invalid, the remainder of the Act and of such amendments, and the application of such provision to other persons or circumstances, shall not be affected thereby.

5. The pertinent portion of Section 9 of the Selective Training and Service Act of 1940 (Act of September 16, 1940, 54 Stat. 885, 50 U. S. C. App. 301, *et seq.*) as amended by the War Labor Disputes Act, is set forth in Section 3 of the War Labor Disputes Act, set forth at pp. 41–42.

6. The Norris-La Guardia Act, Act of March 23, 1932, c. 90, 47 Stat. 70, 29 U. S. C. 101–115, provides as follows:

> AN ACT To amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes.
>
> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That no court of the United States, as herein defined, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this Act; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this Act.
>
> SEC. 2. In the interpretation of this Act and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are herein defined and limited, the public policy of the United States is hereby declared as follows:
>
> Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the indi-

vidual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of, and limitations upon, the jurisdiction and authority of the courts of the United States are hereby enacted.

SEC. 3. Any undertaking or promise, such as is described in this section, or any other undertaking or promise in conflict with the public policy declared in section 2 of this Act, is hereby declared to be contrary to the public policy of the United States, shall not be enforceable in any court of the United States and shall not afford any basis for the granting of legal or equitable relief by any such court, including specifically the following:

Every undertaking or promise hereafter made, whether written or oral, express or implied, constituting or contained in any contract or agreement of hiring or employment between any individual, firm, company, association, or corporation, and any employee or prospective employee of the same, whereby

(a) Either party to such contract or agreement undertakes or promises not to join, become, or remain a member of any labor organization or of any employer organization; or

(b) Either party to such contract or agreement undertakes or promises that he will withdraw from an employment relation in the event that he joins, becomes, or remains a member of any labor organization or of any employer organization.

SEC. 4. No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 3 of this Act;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 3 of this Act.

SEC. 5. No court of the United States shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in section 4 of this Act.

SEC. 6. No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof.

SEC. 7. No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as herein defined, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

(b) That substantial and irreparable injury to complainant's property will follow;

(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(d) That complainant has no adequate remedy at law; and

(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public

officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property: *Provided, however,* That if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice. Such a temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of said five days. No temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable attorney's fee) and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

The undertaking herein mentioned shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against said complainant and surety, upon a hearing to assess damages of which hearing complainant and surety shall have reasonable notice, the said complainant and surety submitting

themselves to the jurisdiction of the court for that purpose. But nothing herein contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity.

SEC. 8. No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration.

SEC. 9. No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and as shall be expressly included in said findings of fact made and filed by the court as provided herein.

SEC. 10. Whenever any court of the United States shall issue or deny any temporary injunction in a case involving or growing out of a labor dispute, the court shall, upon the request of any party to the proceedings and on his filing the usual bond for costs, forthwith certify as in ordinary cases the record of the case to the circuit

court of appeals for its review. Upon the filing of such record in the circuit court of appeals, the appeal shall be heard and the temporary injunctive order affirmed, modified, or set aside with the greatest possible expedition, giving the proceedings precedence over all other matters except older matters of the same character.

SEC. 11. In all cases arising under this Act in which a person shall be charged with contempt in a court of the United States (as herein defined), the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed: *Provided,* That this right shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice or to apply to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders, or process of the court.

SEC. 12. The defendant in any proceeding for contempt of court may file with the court a demand for the retirement of the judge sitting in the proceeding, if the contempt arises from an attack upon the character or conduct of such judge and if the attack occurred elsewhere than in the presence of the court or so near thereto as to interfere directly with the administration of justice. Upon the filing of any such demand the judge shall thereupon proceed no further, but another judge shall be designated in the same manner as is provided by law. The demand shall be filed prior to the hearing in the contempt proceeding.

SEC. 13. When used in this Act, and for the purposes of this Act—

(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as hereinafter defined) of "persons participating or interested" therein (as hereinafter defined).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in

negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(d) The term "court of the United States" means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia.

SEC. 14. If any provision of this Act or the application thereof to any person or circumstance is held unconstitutional or otherwise invalid, the remaining provisions of the Act and the application of such provisions to other persons or circumstances shall not be affected thereby.

SEC. 15. All Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed.

7. Section 20 of the Clayton Act of October 15, 1914, c. 323, Section 20, 38 Stat. 738, 29 U. S. C. 52, provides as follows:

No restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with

particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States.

8. Executive Order No. 9728 provides as follows:

EXECUTIVE ORDER No. 9728

AUTHORIZING THE SECRETARY OF THE INTERIOR TO TAKE POSSESSION OF AND TO OPERATE CERTAIN COAL MINES

WHEREAS after investigation I find and proclaim that there are interruptions or threatened interruptions in the operation of

the mines producing bituminous coal as a result of existing or threatened strikes and other labor disturbances; that the coal produced by such mines is required for the war effort and is indispensable for the continued operation of the national economy during the transition from war to peace; that the war effort will be unduly impeded or delayed by such interruptions; and that the exercise, as hereinafter specified, of the powers vested in me is necessary to insure the operation of such mines in the interest of the war effort and to preserve the national economic structure in the present emergency:

NOW, THEREFORE, by virtue of the power and authority vested in me by the Constitution and laws of the United States, including Section 9 of the Selective Training and Service Act of 1940 (54 Stat. 892) as amended by the War Labor Disputes Act (57 Stat. 163), as President of the United States and Commander-in-Chief of the Army and Navy of the United States, it is hereby ordered as follows:

1. The Secretary of the Interior is authorized and directed to take possession of any and all such mines, and, to the extent that he may deem necessary, of any real or personal property, franchises, rights, facilities, funds, and other assets used in connection with the operation of such mines; to operate or to arrange for the operation of such mines in such manner as he may deem necessary in the interest of the war effort; and to do all things necessary for, or incidental to, the production, sale, and distribution of the coal produced, prepared, or handled by the said mines.

2. The Secretary of the Interior shall operate the said mines in accordance with such terms and conditions of employment as are in effect at the time possession thereof is taken, subject to the provisions of Section 5 of the War Labor Disputes Act.

3. Subject to the national wage and price stabilization policies as determined by the National Wage Stabilization Board and the Economic Stabilization Director, the Secretary of the Interior is authorized, pursuant to the provisions of Section 5 of the War Labor Disputes Act, following such negotiations as he may deem necessary with the duly constituted representatives of the employees, to apply to the National Wage Stabilization Board for appropriate changes in the terms and conditions of employment for the period of the operation of the mines by the Government.

4. In carrying out this order, the Secretary of the Interior shall act through or with the aid of such public or private instrumentalities or persons as he may designate. All Federal agencies are directed to cooperate with the Secretary of the Interior to the fullest extent possible in carrying out the purposes of this order.

5. The Secretary of the Interior shall make employment available and provide protection to all employees working at such mines and to all persons seeking employment so far as they may be needed; and upon the request of the Secretary of the Interior, the Secretary of War shall take such action, if any, as he may deem necessary or desirable to provide protection to all such persons and mines.

6. The Secretary of the Interior shall permit the managements of the mines taken under the provisions of this order to continue with their managerial functions to the maximum degree possible consistent with the aims of this order.

7. The Secretary of the Interior is authorized and directed to maintain customary working conditions in the mines and customary procedure for the adjustment of workers' grievances. He shall recognize the right of the workers to continue their membership in any labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, provided that such concerted activities do not interfere with the operations of the mines.

8. Possession of any mine or mines taken under this order shall be terminated by the Secretary of the Interior as soon as practicable, but in no event more than sixty days after the restoration of the productive efficiency of any such mine or mines prevailing prior to the taking of possession thereof.

HARRY S. TRUMAN

THE WHITE HOUSE,

May 21, 1946.